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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91221038
Party	Plaintiff Abercrombie & Fitch Trading Co.
Correspondence Address	SUSAN M KAYSER JONES DAY 51 LOUISIANA AVENUE NW WASHINGTON, DC 20001-2113 UNITED STATES skayser@jonesday.com, hlance@jonesday.com, kbaird@jonesday.com, nytef@jonesday.com
Submission	Reply in Support of Motion
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Signature	/Susan M. Kayser/
Date	07/28/2015
Attachments	2015-07-28_A&F Reply In Support of Its Motion for Sanctions.pdf(175441 bytes) 2015-07-28_Kayser Declaration & Exhibits.pdf(885500 bytes)

Abercrombie & Fitch Trading Co.,
Opposer,
v.
Western Rise, LLC,
Applicant.

Opposition No. 91221038

Opposer Abercrombie & Fitch Trading Co. (“A&F”) respectfully submits this reply in support of its motion for an order sanctioning Applicant Western Rise, LLC (“Western Rise”) for its filing of a frivolous counterclaim alleging abandonment. Western Rise’s amended counterclaim continues to assert wholly deficient legal allegations of abandonment that are reckless and without any factual support. This Reply corrects misstatements and responds to issues raised in Western Rise’s opposition, and will assist the Board in clarifying the issues.

1

litigation.”¹ 37 C.F.R. § 11.18(b)(2)(i)-(iii); Fed. R. Civ. P. 11(b)(1)-(3). As made clear by its opposition Western Rise’s entire counterclaim is based on one “future intent” statement by A&F’s former CEO that ignores overwhelming and readily accessible evidence of extensive, current, and continuing use of A&F’s Moose Mark. A statement of prospective future intent – and one that never came to fruition—is a legally and factually insufficient basis for an abandonment claim.

I. Western Rise’s Counterclaim Is Not Warranted By Existing Law

In order to state a legally sufficient claim for abandonment under the Lanham Act, the claimant must allege some period of nonuse by the registrant. 15 U.S.C. § 1127 (“A mark shall be deemed to be ‘abandoned’ if...its use has been discontinued...”);² *Otto Int’l, Inc. v. Otto Kern GmbH*, 83 U.S.P.Q.2d 1861, 1863 (TTAB 2007) (“In order to set forth a cause of action to cancel the registration of a mark which assertedly has been abandoned, plaintiff must allege . . . at least *three consecutive years of non-use* or must set forth facts that show *a period of non-use* less than three years coupled with an intent not to resume use.”) (emphasis added); *Electro Source, LLC v. Brandess-Kalt-Aetna Group, Inc.*, 458 F.3d 931, 938 (9th Cir. 2006) (“as a threshold matter, abandonment requires *complete* cessation or discontinuance of trademark use”) (emphasis in the original).

¹ Western Rise identifies no basis -- beyond its desire to further delay this opposition --that required A&F to serve a **new** motion for sanctions (which would have required **another** 21 day safe harbor). Western Rise’s amended counterclaim failed to correct the deficiencies in the original counterclaim as identified in the Motion for Sanctions. There are no allegations in Western Rise’s amended counterclaim that would support an abandonment cancellation – *i.e.* no facts demonstrating nonuse. Accordingly, Western Rise’s amended counterclaim failed to “appropriately correct[]” the same legal and factual deficiencies in the original counterclaim (*i.e.* no facts demonstrating nonuse). See Fed. R. Civ. P. 11(c)(2) (motion for sanctions may be filed if not “appropriately corrected within 21 days of service”).

² While a mark may also be deemed abandoned if it has become generic, Western Rise has not asserted such a basis here, and no facts exist that would support this basis here. See 15 U.S.C. § 1127.

None of Western Rise's allegations establish *any* period of nonuse, and accordingly Western Rise's abandonment claim is not warranted by existing law. First, at most, Western Rise's allegations show a possible future intent by A&F to decrease use of its logos in the future. However, "a prospective statement of an intent to cease use in the future, made during a period of legitimate trademark use, does not meet the statutory standard of an intent not to resume use." 3 *McCarthy on Trademarks and Unfair Competition* § 17:11 (4th ed.) (citing *Electro Source, LLC v. Brandess-Kalt-Aetna Group, Inc.*, 458 F.3d 931, 937 (9th Cir. 2006)).³ As the Ninth Circuit explained:

Abandonment under § 1127 requires an intent not to resume trademark use, as opposed to a prospective intent to abandon the mark in the future. This distinction is not merely semantic. An intent not to *resume* use presupposes that the use has already ceased--the first prong of the abandonment statute. In contrast, a prospective intent to abandon says nothing about whether use of the mark has been discontinued.

Electro Source, LLC v. Brandess-Kalt-Aetna Group, Inc., 458 F.3d 931, 937 (9th Cir. 2006). Similarly, in *Money Store v. Harriscorp Finance, Inc.*, the Seventh Circuit reversed a judgment of abandonment based on evidence merely suggesting an intent to abandon use where "[a]lthough registrant's use of the mark may have declined," there was still use in commerce, and "[t]he statutory definition makes clear . . . that abandonment requires *discontinuance of use* as well as intent to abandon." 689 F.2d 666, 675-76 (7th Cir. 1982) (emphasis in original). Where, as here, the allegations do not show a period of complete cessation of use, "the intent not to resume use prong of abandonment does not come into play." *Electro Source, LLC v. Brandess-Kalt-Aetna Group, Inc.*, 458 F.3d 931, 937-38 (9th Cir. 2006).

³ Western Rise was put on notice of the insufficiency of statements of prospective intent to establish abandonment by A&F's motion to dismiss (at p. 5), yet still continued to assert its abandonment claim based solely on alleged statements of prospective intent, and in the face of clear evidence of use.

Second, none of the alleged quotations attributed to A&F's former CEO actually state that A&F was going to completely cease all use or discontinue use of its Moose Marks.⁴ Rather, the cited quotations discuss decreasing the use of logos generally in the future. Moreover, such news reports are not evidence. *See L.C. Licensing, Inc. v. Berman*, 86 U.S.P.Q.2d 1883, 1886-87 (TTAB 2003) (denying motion to introduce newly discovered evidence as Wall Street Journal article "is not evidence of opposer's intent to abandon its ENYCE mark" because "a newspaper article is probative only for what it shows on its face, not for the truth of the matters contained therein").⁵

Third, Western Rise provides no legal support (and there is none) for its claim (at ¶ 10 of its Amended Counterclaim) that merely not responding to reports in the news media somehow establishes or "signif[ies] that [A&F] ceased using the Moose Marks . . . in the spring of 2015" -- especially when the statements on their face do not establish nonuse *and* there is clear evidence to the contrary. The Board has no obligation to accept Western Rise's speculative facts or implausible inferences as true. *NSM Res. Corp. v. Microsoft Corp.*, 113 U.S.P.Q.2d 1029, 1032 (TTAB 2014) (Board "not required to accept as true . . . unwarranted factual inferences"); *Bell*

⁴ The only "news reports" (cited in paragraphs 3 and 7 of Amended Counterclaim) that state A&F would cease all use in the future do not actually quote A&F's former CEO (rather they misstate what the former CEO said). A&F's former CEO's did not state there would be no use of the Moose logo (or any other logo). In any event, such third party hearsay is not evidence, and it cannot "rebut" evidence of actual and current use. *ZAO Gruppa Predpriyatij Ost v. Vosk Int'l Co.*, Opposition No. 91168423, 2011 TTAB LEXIS 240, *11 (TTAB August 9, 2011) ("proffered press release and news articles . . . are hearsay, and are not admissible to prove the truth of the matters asserted therein").

⁵ Additionally, there is no "competent witness" that could testify as to the truth of any of the alleged statements in the third party news reports, as a cursory review of A&F's websites or visit to any A&F retail store demonstrates clear and irrefutable proof of use both in and after Spring 2015.

Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (Factual allegations must be enough to raise a right to relief above the speculative level).⁶

II. Western Rise’s Alleged “Factual” Contentions Have No Evidentiary Support

Western Rise’s alleged “facts” in its amended counterclaim demonstrate that it failed to undertake even a bare inquiry before filing its amended counterclaim. Its opposition demonstrates that it is blindly ignoring overwhelming and clear evidence *demonstrating* that its alleged factual contentions are false, have no evidentiary support, and that there is no investigation or discovery that will provide any evidentiary support. For example, Western Rise claims (at p. 6) that its counterclaim is not speculative because they are based on “very recent statements” made by “A&F’s own Chief Executive Officer” about “cessation of all use of the Moose Marks in the United States.” However Western Rise’s own allegations establish that the alleged “statements” are not “very recent,” but instead were made nearly a year ago in August 2014. (*See* Amended Counterclaim ¶ 2.) Additionally, Western Rise is well aware that Mr. Jeffries is no longer A&F’s CEO as A&F’s counsel informed Western Rise of this after Western Rise filed its original counterclaim.⁷ (Kayser Decl. Ex. 1.) Further, as noted above, none of the statements attributed by Western Rise to Mr. Jeffries actually state that A&F would cease or had ceased all use of the Moose Marks in the United States. (*See* Western Rise’s Amended Counterclaim ¶¶ 2, 4, 5.)

Western Rise also alleges (at ¶ 8 of its Counterclaim) that A&F has not addressed or refuted the alleged statements by Mr. Jeffries which Western Rise claims “were made publicly

⁶ A&F is not equating the motion for sanctions standard with the motion to dismiss standard as Western Rise claims. Fed. R. Civ. P. 11 requires that Western Rise assert facts that establish a claim under existing law, Western Rise’s implausible “facts” and unwarranted inferences make it clear that they have not alleged a cognizable legal claim under existing law.

⁷ Western Rise could have easily confirmed this fact for itself as well as A&F’s former CEO’s resignation is public knowledge and was the subject of press coverage.

for consumption by investors.” (Western Rise Opp., p. 6.) Yet a reasonable investigation of A&F’s statements to its investors would have shown the clear statement by A&F in its 10-K annual report, filed on March 30, 2015 (well in advance of Western Rise’s filing of its counterclaim on April 21, 2015, and its amended counterclaim on June 15, 2015) that it was using and intended to continue using its Moose trademark:

TRADEMARKS.

The Abercrombie & Fitch®, abercrombie®, Hollister®, Gilly Hicks®, **“Moose”** and “Seagull” trademarks are registered with the U.S. Patent and Trademark Office and registered or pending with the registries of countries where stores are located or likely to be located in the future. . . . The Company believes its products are identified by its trademarks and, therefore, its trademarks are of significant value. . . . **The Company intends to continue using its core trademarks and to renew each of its registered trademarks that remain in use.**

(Kayser Decl. Ex. 2 (emphasis added).) All of A&F’s SEC filings are publicly available on its investor relations website at <http://www.abercrombie.com/anf/investors/investorrelations.html>.

Most glaringly, Western Rise does not deny that it did not even take the time to review A&F’s websites, or visit an A&F store before asserting its counterclaim, even during the safe harbor period after being served with hundreds of print-outs from A&F’s websites demonstrating extensive ongoing use which were dated April and May 2015, thereby falling squarely into “spring 2015,” when Western Rise claims that A&F ceased use. (*See also* Kayser Decl. Ex. 1 (noting to Western Rise’s counsel (prior to A&F’s filing its motion to dismiss and motion for sanctions) the extensive use of A&F’s Moose Marks on A&F’s adult and kids websites).) Western Rise’s only response is that the evidence is “not conclusive,” yet the Board has “deem[ed] a document obtained from the Internet displaying a date and its source as presumptively true and genuine.” *Safer, Inc. v. Oms Invs.*, 94 U.S.P.Q.2D 1031, 1039 (TTAB 2006); *see also* TMEP § 904.03(i) (a web page that displays a product is an acceptable specimen of use in commerce if it “(1) contains a picture or textual description of the identified goods; (2)

shows the mark in association with the goods; and (3) provides a means for ordering the identified goods”). The screenshots from A&F’s websites display *hundreds* of photos of products bearing A&F’s Moose Marks, and display a link to purchase the depicted garments. (See Kramer Decl. Exs. A – B.)⁸ Additionally, Mr. Kramer’s declaration contains further evidence regarding current use (not historical use as Western Rise claims), including the length of time A&F’s Moose Marks have been in use (§ 2), a combined total of billions of dollars of sales revenue generated by use of A&F’s Moose Marks (§ 3), the number of stores currently offering for sale products with the Moose Marks (§ 5), the number of visits last year by consumers to A&F’s websites (§ 6), and how a consumer can easily locate products currently offered for sale bearing A&F’s Moose Marks on A&F’s websites (§§ 7-12).

Western Rise claims it needs discovery to “counter the evidence tendered by A&F,” but offers no explanation of what it could find out in discovery that would counter the pervasive, publicly available evidence that A&F is still using its Moose Marks. There is current use of the Moose Marks. (Kramer Decl. §§ 4-12, Exs. A and B.) There has been extensive and continuous use of the Moose Marks. (Kramer Decl. §§ 8-12, Exs. A and B.) No amount of discovery can negate evidence of actual use. Western Rise states no reason to engage in discovery that could support non-use. *See Keebler Co. v. Murray Bakery Products*, 866 F.2d 1386, 1389, 9 U.S.P.Q.2d 1736, 1738-39 (Fed. Cir. 1989) (alleging existence of “certain information” or “other evidence” insufficient to grant a request for discovery); *Build-A-Bear Workshop v. Silver Dollar City, Inc.*, Cancellation No. 92041922, 2003 TTAB LEXIS 567, *8 (TTAB Dec. 1, 2003) (denying request for discovery based “merely on some vague hope plaintiff will turn something up that is relevant”).

⁸ In addition to the photographs, the descriptions of many of the products refer to “moose embroidery” or “moose-embroidered” elements on the products. (See e.g. Kramer Decl. Ex. A pp. 58-63, 76-83, 89-100. 140-185.)

Given the clear evidence of nearly 500 items bearing the A&F Moose Marks being offered for sale on A&F's websites in spring 2015, Western Rise fails to identify any evidence that would (or could) support its allegation (at ¶ 10 of its Counterclaim) that such use is "token use" and not "bona fide use in the ordinary course of trade." Such extensive use is clearly bona fide use of the Moose Marks in the ordinary course of trade, not merely "token" use. *See United States Olympic Comm. v. Kayser-Roth Corp.*, Cancellation No. 92021648, 2004 TTAB LEXIS 28, *30-31 (TTAB January 23, 2004) ("no basis for concluding that respondent's sales of 1500 items over a twenty-eight month period were mere token use"); *Person's Co. v. Christman*, 900 F.2d 1565, 1571, 14 U.S.P.Q.2D 1477, 1481-82 (Fed. Cir. 1990) (even "intermittent sales" and low levels of inventory constitute sufficient use to support registration).

III. Western Rise's Opposition Demonstrates Its Improper Purpose In Filing Its Counterclaim

Western Rise's opposition brief reveals its true intention in filing its counterclaim--to harass A&F executives and increase the costs for A&F in the opposition.⁹ Despite lacking *any* evidence of nonuse and in the face of extensive current use by A&F of its Moose Marks, Western Rise claims it still needs discovery so Western Rise it can "ask A&F's executives" about a statement made by A&F's former CEO and how "A&F acted on this change in market strategy." Given that the statement Western Rise bases its entire claim on was made nearly a

⁹ The mere fact that Western Rise paid the required \$3,000 filing fee fails to demonstrate that it did not bring the claim to unnecessarily harass or increase costs for A&F. Western Rise could have saved itself the filing fee had it spent five minutes searching A&F's websites or walked into one of A&F's nearly 400 retail stores. Additionally, the fact that A&F's Moose Marks were not cited against Western Rise's applications is irrelevant. *Hale v. Go Pro Workouts, LLC*, 2014, Opposition No. 91211810, TTAB LEXIS 495, *19 (TTAB Nov. 18, 2014) ("fact that the trademark examining attorneys, in the *ex parte* examination of Applicant's . . . application[], did not cite Opposer's previously registered mark is irrelevant and is not a binding determination that there is no likelihood of confusion between Opposer's and Applicant's marks"); *Hilson Research Inc. v. Society for Human Res. Mgmt.*, 27 U.S.P.Q.2d 1423, 1439 (TTAB 1993) ("[T]he fact that the Trademark Examining Attorney, in the *ex parte* examination of [Applicant's] applications, did not cite [Opposer's] previously registered mark is irrelevant").

year ago by an individual that Western Rise knows is no longer A&F's CEO, and the spring 2015 season has come and gone without any cessation of use by A&F of its Moose Marks (as demonstrated by clear and un rebutted evidence), Western Rise has no basis to harass A&F's executives about a stale comment or about any ongoing market strategy. Nothing Western Rise could ask A&F's executive about would establish any basis for an abandonment claim because there has not been any cessation of use.

IV. Conclusion

For the foregoing reasons, A&F respectfully requests that the Board grant its motion for sanctions for Western Rise's continued improper, baseless, and bad-faith filing pursuant to Fed. R. Civ. P. 11, 37 C.F.R. § 11.18 and TBMP § 527.02, and as a sanction, enter judgment for A&F on Western Rise's amended counterclaim.

Respectfully submitted,

Abercrombie & Fitch Trading Co.

Date: July 28, 2015

By: / Susan M. Kayser /
Susan M. Kayser
Jessica D. Bradley
Holly B. Lance
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing (i) Opposer's Reply In Support Of Its Motion For Sanctions and (ii) Declaration of Susan M. Kayser has been served on counsel for Western Rise, LLC via overnight courier on July 28, 2015, with a courtesy copy via email to:

Scott E. Taylor, Esq.
J. Tucker Barr, Esq.
Arnall Golden Gregory LLP
171 17th St. NW, Suite 2100
Atlanta, GA 30363-1031
Scott.Taylor@AGG.COM
Tucker.Barr@AGG.COM

/ Jessica D. Bradley /
Attorney for Opposer

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Abercrombie & Fitch Trading Co.,)	
)	
)	
Opposer,)	
v.)	
)	
Western Rise, LLC,)	
)	
Applicant.)	

Opposition No. 91221038

DECLARATION OF SUSAN M. KAYSER

I, Susan M. Kayser, declare and state as follows:

1. I am a partner in the law firm of Jones Day, counsel for Opposer, Abercrombie & Fitch Trading Co. (“A&F”). I make this declaration in support of Opposer’s Motion for Sanctions. The following facts are within my knowledge and, if called and sworn as a witness, I could and would testify competently thereto. The matters referred to in this declaration are based upon my personal knowledge, and/or when referencing documents, such documents were reviewed by me and where applicable, were obtained and compiled at my instruction by other attorneys employed by Jones Day, and if called as a witness I could and would testify competently thereto.

2. Attached hereto as **Exhibit 1** is a true and correct copy of an e-mail chain dated May 26, 2015 between myself and Scott E. Taylor, counsel for Applicant Western Rise. In the e-mail, sent prior to Western Rise filing its amended counterclaim and prior to A&F filing its motion for sanctions, I advised Mr. Taylor that Mr. Jeffries was no longer A&F’s CEO. I also advised Mr. Taylor that “[i]f you check your facts you will easily see the extensive use of the Moose Mark, including but not limited to A&F’s adult and kid’s websites.”

3. Attached hereto as **Exhibit 2** is a true and correct copy of an excerpt from A&F's 10-K annual report, filed on March 30, 2015, with highlighting added specifying that A&F intends to continue using its core trademarks and specifically names the Moose trademark in its list of core trademarks.. A&F's 10-K annual report, and all of A&F's SEC filings are publicly available on A&F's investor relations website at <http://www.abercrombie.com/anf/investors/investorrelations.html>.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on July 28, 2015.

/Susan M. Kayser/

Susan M. Kayser

EXHIBIT 1



RE: A&F v. Western Rise, Opp No. 91221038: Counterclaim and Motion for Sanctions - Proposed 30 Day Consented Extension of All Dates 📎

Susan M Kayser to: Taylor, Scott E.
4-4694

05/26/2015 03:55 PM

Cc: Holly Lance, Jessica D Bradley, "Barr, Tucker"

Scott,

The 30 days was for Western Rise's benefit, not A&F's.

Western Rise's counterclaim is indeed frivolous. A&F is currently using its mark and has no intent to abandon.

Western Rise's claims of "abandonment" have no evidentiary support. If you check your facts you will easily see the extensive use of the Moose Mark, including but not limited to A&F's adult and kid's websites. You will also find that Mike Jeffries is no longer CEO.

Susan M. Kayser ([bio](#))

Partner

[JONES DAY® - One Firm WorldwideSM](#)

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Washington, DC 20001-2113

Office +1.202.879.4694

skayser@jonesday.com

From: "Taylor, Scott E." <Scott.Taylor@AGG.com>

To: 'Susan M Kayser' <skayser@jonesday.com>,

Cc: Jessica D Bradley <jbradley@JonesDay.com>, Holly Lance <hlance@jonesday.com>, "Barr, Tucker" <Tucker.Barr@AGG.com>

Date: 05/26/2015 02:01 PM

Subject: RE: A&F v. Western Rise, Opp No. 91221038: Counterclaim and Motion for Sanctions - Proposed 30 Day Consented Extension of All Dates

Susan –

Thank you for your email. I hope that you had a nice holiday weekend.

In response to your arbitrary deadline and the last-minute request set forth below, we completely disagree with your contention that Western Rise's counterclaim somehow lacks merit. By way of one example, Abercrombie CEO Mike Jeffries' statement to the Abercrombie & Fitch shareholders (published in various news outlets) that the

“moose mark” is being abandoned as of the spring of this year certainly supports Western Rise’s counterclaim. We anticipate that discovery in this matter will yield additional evidence supporting the counterclaim. Indeed, any motion to dismiss or motion for sanctions would seem to be frivolous.

If you need some additional time to make your next filing, then we are willing to consent to a week or so for you to do that, but we do not believe that an additional 30 days is warranted.

Scott Taylor

Scott E. Taylor Partner	
Arnall Golden Gregory LLP 171 17 th Street NW, Suite 2100 Atlanta, GA 30363 p: 404.873.8728 f: 404.873.8729 scott.taylor@agg.com bio linkedin vcard website	

From: Susan M Kayser [<mailto:skayser@jonesday.com>]

Sent: Tuesday, May 26, 2015 7:54 AM

To: Taylor, Scott E.; Barr, Tucker

Cc: Jessica D Bradley; Holly Lance

Subject: A&F v. Western Rise, Opp No. 91221038: Counterclaim and Motion for Sanctions - Proposed 30 Day Consented Extension of All Dates

Importance: High

Dear Messrs. Taylor and Barr:

A&F has reviewed Western Rise's answer and counterclaim. Western Rise's demand for cancellation of eleven of A&F's well-known Moose Mark registrations on the alleged basis that A&F's MOOSE marks have been abandoned is wholly without merit and sanctionable. The facts supporting current use of A&F's Moose Mark are overwhelming and easily accessible, There is no evidence that A&F has abandoned its Moose Marks.

A&F will be serving Western Rise with a Motion for Sanctions based on the frivolity of its counterclaim this week. Western Rise will have 21 days from receipt to consider the Motion and withdraw its counterclaim.

Today is the deadline for A&F to respond to the counterclaim. In light of the baseless counterclaim, please advise if Western Rise will consent to a 30-day extension of all deadlines. Western Rise will then have time to consider and withdraw the counterclaim prior to A&F's deadline to respond.

If Western Rise declines A&F's request for an extension, A&F will be filing a Motion to Dismiss the counterclaim based on Rule 12(b)(6) as Western Rise's counterclaim is not only frivolous but it is also

legally deficient.

Please advise by 2 pm Eastern time today if Western Rise consents to a 30 day extension of all deadlines, including A&F's deadline to respond to the counterclaim.

Susan M. Kayser ([bio](#))

Partner

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=====

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EXHIBIT 2

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended January 31, 2015

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number 001-12107

ABERCROMBIE & FITCH CO.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

31-1469076

(I.R.S. Employer Identification No.)

6301 Fitch Path, New Albany, Ohio

(Address of principal executive offices)

43054

(Zip Code)

Registrant's telephone number, including area code: (614) 283-6500

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
Class A Common Stock, \$0.01 Par Value	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. ☒ Yes ☐ No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. ☐ Yes ☒ No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). ☒ Yes ☐ No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Act). ☐ Yes ☒ No

Aggregate market value of the Registrant's Class A Common Stock (the only outstanding common equity of the Registrant) held by non-affiliates of the Registrant (for this purpose, executive officers and directors of the Registrant are considered affiliates) as of August 1, 2014: \$2,672,148,648.

Number of shares outstanding of the Registrant's common stock as of March 26, 2015: 69,548,066 shares of Class A Common Stock.

DOCUMENT INCORPORATED BY REFERENCE:

Portions of the Registrant's definitive proxy statement for the Annual Meeting of Stockholders, to be held on June 18, 2015, are incorporated by reference into Part III of this Annual Report on Form 10-K.

SEASONAL BUSINESS.

The retail apparel market has two principal selling seasons: the Spring season which includes the first and second fiscal quarters (“Spring”); and the Fall season which includes the third and fourth fiscal quarters (“Fall”). As is typical in the apparel industry, the Company experiences its greatest sales activity during the Fall season due to the Back-to-School (August) and Holiday (November and December) selling periods, particularly in the U.S.

TRADEMARKS.

The Abercrombie & Fitch[®], abercrombie[®], Hollister[®], Gilly Hicks[®], “Moose” and “Seagull” trademarks are registered with the U.S. Patent and Trademark Office and registered or pending with the registries of countries where stores are located or likely to be located in the future. In addition, these trademarks are either registered, or the Company has applications for registration pending, with the registries of many of the foreign countries in which the manufacturers of the Company’s products are located. The Company has also registered, or has applied to register, certain other trademarks in the U.S. and around the world. The Company believes its products are identified by its trademarks and, therefore, its trademarks are of significant value. Each registered trademark has a duration of ten to 20 years, depending on the date it was registered, and the country in which it is registered, and is subject to an indefinite number of renewals for a like period upon continued use and appropriate application. The Company intends to continue using its core trademarks and to renew each of its registered trademarks that remain in use.

OTHER INFORMATION.

Additional information about the Company’s business, including its revenues and profits for the last three fiscal years and gross square footage of stores, is set forth under “ITEM 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS” of this Annual Report on Form 10-K.

COMPETITION.

The sale of apparel, accessories and personal care products through stores and direct-to-consumer channels is a highly competitive business with numerous participants, including individual and chain fashion specialty stores, as well as regional and national department stores. As the Company continues expanding internationally, it also faces competition in local markets from established chains, as well as local specialty stores. Brand recognition, fashion, price, service, store location, selection and quality are the principal competitive factors in retail store and direct-to-consumer sales.

The competitive challenges facing the Company include: anticipating and quickly responding to changing fashion trends and maintaining the aspirational positioning of its brands. Furthermore, the Company faces additional competitive challenges as many retailers continue promotional activities, particularly in the U.S. In response to these conditions, the Company has engaged in promotional activity and increased its focus on operating efficiency while seeking to preserve the value of its brands.

ASSOCIATE RELATIONS.

As of March 26, 2015, the Company employed approximately 65,000 associates, of which approximately 57,000 were part-time associates, which equates to approximately 6,000 full-time equivalents. On average, the Company employed approximately 18,000 full-time equivalents during Fiscal 2014.

The Company believes it maintains a good relationship with its associates. However, in the normal course of business, the Company is party to lawsuits involving former and current associates.

ENVIRONMENTAL MATTERS.

Compliance with domestic and international regulations related to environmental matters has not had, nor is it expected to have, any material effect on capital expenditures, earnings, or the Company’s competitive position based on information and circumstances known to us at this time.